

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

March 17, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 12, 2005

Case Number: TSO-0263

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ^{1/} A Department of Energy (DOE) Operations Office denied the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual should be granted an access authorization. As set forth in this Decision, I have determined that the individual should be granted an access authorization.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with the DOE, DOE contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, a DOE contractor requested that the individual be granted an access authorization as a condition of his employment. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being denied pending the resolution of certain derogatory information that created substantial

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

doubt regarding his eligibility. This derogatory information is described in a Notification Letter subsequently issued to the individual on May 25, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h, j and l. More specifically, the Notification Letter alleges that the individual has: 1) “an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability [of the individual]”; 2) “[b]een, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse,” and 3) “engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security.” 10 C.F.R. §§ 710.8(h), (j) and (l) (Criterion H, Criterion J and Criterion L, respectively). The bases for these findings are summarized below.

With regard to Criteria H and J, the Notification Letter states that on August 17, 2004, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who issued a report in which he diagnosed the individual with Alcohol Dependence, in Early Full Remission, based upon diagnostic criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition TR (DSM-IV TR)*. According to the DOE Psychiatrist, this condition may cause a significant defect in judgment or reliability if a strong and verifiable program of continued recovery and maintenance is not followed. The DOE Psychiatrist further indicated that the individual has not yet fully established adequate evidence of a strong and verifiable program of maintenance of his rehabilitation. In addition, the Notification Letter states the following: 1) that the individual was admitted to an in-patient alcohol rehabilitation program on December 9, 2003, and was diagnosed with Alcohol Dependence; 2) that a psychologist at the site’s Occupational Health Services department diagnosed the individual with Alcohol Dependence, Early Full Remission and 3) that the individual admitted that since being discharged from the alcohol rehabilitation program on January 9, 2004, he has not attended the recommended 90 Alcoholics Anonymous (AA) meetings in 90 days. The individual also admits that the psychologist recommended additional involvement in AA, but he was unable to get to the meetings. *See* Notification Letter.

Under Criterion L, the Notification Letter states that information in the possession of DOE Security indicated that the individual was arrested on June 8, 2003, and charged with Driving Under the Influence and Implied Consent Violation after refusing to take a Breathalyzer test. In addition, the Notification Letter states that during the November 5, 2003 Personnel Security Interview (PSI), the individual stated that his use of alcohol had nothing to do with the divorce that he was going through, which contradicts his statements during the April 1, 2004 PSI and the August 17, 2004 psychiatric evaluation when he admitted that drinking did cause his second wife to leave him. Finally, the Notification Letter states that the individual denied during the August 17, 2004 psychiatric evaluation that he had experienced blackouts from alcohol consumption, which contradicts records from the alcohol rehabilitation program, where he stated that he had.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on July 12, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On August 10, 2005, I was appointed as Hearing Officer in this case. After conferring

with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, the DOE Counsel called the DOE Psychiatrist as DOE Security's sole witness. Apart from testifying on his own behalf, the individual called a clinical psychologist, an alcohol and drug counselor, a co-worker and a friend. The transcript taken at the hearing will be hereinafter cited as "Tr." Various documents that were submitted by the DOE Counsel will be cited as "DOE Exh." and those submitted by the individual as "Ind. Exh."

II. Summary of Findings

The following facts are essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual has been working for a DOE contractor since 1976 and held an access authorization until June 2000. His access authorization was terminated in June 2000 due to long-term disability. A re-investigation to reinstate the individual's access authorization was requested in January 2003. Derogatory information presented during his background investigation resulted in a determination by DOE Security to conduct two Personnel Security Interviews (PSIs) with the individual. Below is a summary of the derogatory information revealed by the individual's background investigations and PSIs.

The individual first began drinking alcohol as a teenager and increased his use as he got older. He estimates that at one point that he drank about one gallon of liquor a month, drinking two or three drinks on week nights and seven or eight drinks over the weekend. On June 8, 2003, the individual was arrested and charged with DUI and Implied Consent Violation after refusing to take a Breathalyzer test. The individual admitted to having consumed "two shots of liquor" the morning of his arrest. The evidence would not sustain the initial allegation and the DUI charge was reduced to a misdemeanor charge of reckless driving. The individual pled guilty to reckless driving, his plea was accepted and he has satisfied all of the terms of his judgment.

In August 2003, the individual voluntarily sought help from an alcohol rehabilitation in-patient program, partly because his attorney suggested it, but also because he felt he needed to change his life. The individual was diagnosed with Alcohol Dependence. He successfully completed the 30-day program and was given a good prognosis. As part of his Aftercare Plan, the individual was directed to totally abstain from alcohol in any form and to engage in AA by attending 90 meetings in 90 days. The individual states that he has not consumed any alcohol since November 2003, almost 2 years.

Due to unresolved security concerns about the individual's consumption of alcohol, DOE Security referred the individual to the DOE Psychiatrist who reviewed the individual's personnel file and performed a psychiatric interview and evaluation of the individual. In his report issued on September 11, 2004, the DOE Psychiatrist opined that the individual met the *DSM-IV* criteria for Alcohol Dependence, in Early Full Remission. He further states in his report that the individual's diagnosis of Alcohol Dependence is a mental condition which may cause a significant defect in his

judgment and reliability if a strong and verifiable program of continued recovery and maintenance is not followed.

The DOE Psychiatrist opined that the individual's condition appears to be under control as he has made some important first steps toward maintaining a lifestyle of sobriety. However, he believes that the individual has not yet fully established adequate evidence of a strong and verifiable program of maintenance of his rehabilitation. In this regard, the DOE Psychiatrist recommended that the individual take part in professional substance abuse counseling, AA or similar support group with documented attendance on a weekly basis and use of a sponsor, and/or a random drug screening monitoring program. He further stated that the individual should demonstrate successful abstinence for a minimum of 2 years and professional counseling and/or AA participation on a weekly basis, documented by a sponsor, for at least one year of this time. In addition, the DOE Psychiatrist opined that adequate evidence of reformation, without the use of professional counseling and AA participation, could be demonstrated by successful total abstinence of at least 30 months (2 and ½ years), during which time he would receive random drug/alcohol screening at least 4 times per year. Lastly, the DOE Psychiatrist opined that if one of the outlined programs is set into place and followed, the individual would show a solid prognosis for achieving success.

III. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of whether the individual's access authorization should be granted, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my determination

that the individual's access authorization should be granted since I conclude that such granting would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criterion H, Mental Illness; Criterion J, Alcohol Use

DOE Security alleges in the Notification Letter that the individual has "a mental condition of a nature which, in the opinion of a board-certified psychiatrist . . . may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). The Notification Letter further asserts under Criterion J that the individual "has been, or is a user of alcohol to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse . . ." 10 C.F.R. § 710.8(j). I will consider concurrently the concerns of DOE Security under Criterion H and Criterion J since they are substantially interrelated. The individual's "mental condition" which DOE Security alleges may result in "a significant defect in judgment and reliability" under Criterion H is the individual's improper use of alcohol under Criterion J.

DOE Security relies upon the report of the DOE Psychiatrist in reaching its findings set forth in the Notification Letter under both Criterion H and Criterion J. DOE Exh. 22 (Report of Psychiatric Evaluation, dated September 11, 2004). After reviewing the individual's DOE personnel security file, conducting a clinical interview and administering psychological testing and a drug screening, the DOE Psychiatrist diagnosed the individual with Alcohol Dependence as defined in the *DSM-IV TR*. The DOE Psychiatrist stated that this diagnosis is substantiated by the individual's admission of a history of significant consumption, recent receipt of a DUI charge, an in-patient admission and subsequent treatment at an alcohol treatment center, and continued follow-up on a monthly basis at the occupational health division where the individual works. According to the DOE Psychiatrist, the individual's mental condition causes or may cause a significant defect in judgment or reliability.

On the basis of the report of the DOE Psychiatrist, I find that DOE Security properly invoked Criteria H and J in denying the individual's access authorization. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raised important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002(1995) (affirmed by OSA, 1995). In these cases, it has been observed that an individual's excessive use of alcohol might impair his judgment and reliability, and render him susceptible to pressure, coercion and duress. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. Accordingly, I will turn to whether the individual has presented sufficient evidence to mitigate the security concerns of DOE relating to his use of alcohol.

Mitigating Evidence

The individual has provided substantial and significant evidence through his own testimony and that of his witnesses in mitigation of the security concerns associated with his consumption of alcohol. As previously stated, the DOE Psychiatrist opined that the individual could show rehabilitation by, *inter alia*, demonstrating successful abstinence for a minimum of two years and professional counseling or AA participation on a weekly basis, documented by a sponsor, for at least one year of this time. During the hearing, the individual asserted that he has not consumed alcohol for almost two years - since he successfully completed an in-patient alcohol rehabilitation program, which he voluntarily entered. He stated that he is now engages in activities such as fishing and walking to help him cope with his alcohol problem. Hearing Transcript (Tr.). at 50 and 51. The individual further stated that he has attended AA meetings as recommended by the DOE Psychiatrist, although not on a regular basis because of his concern with the use of foul language during the meetings. *Id.* at 51. He testified that for a period of time he had difficulty getting to AA meetings because his driver's license was suspended for a year due to his DUI charge. *Id.* at 69. According to the individual, he voiced his concerns regarding the foul language used at the meetings to the Alcohol Counselor and the DOE Psychologist at his job site. He stated that he is currently seeking a Christian-based alcohol support program. *Id.* at 52. After learning of a Christian-based program called Celebrate Recovery during the hearing, the individual indicated a sincere willingness to join. Until he joins such a Christian-based program, the individual testified that he will continue with AA even though he dislikes the language used at the meetings. The individual stated that he does not have a sponsor at AA, but considers his uncle with whom he has a very close relationship and attends church will take the place of a sponsor. *Id.* at 56. According to the individual, he no longer socializes with people who drink. *Id.* at 61. He stated that he plans on abstaining from alcohol and working faithfully in the church. The individual attributed his success thus far to his "faith and belief in Jesus Christ." *Id.* at 57.

The individual's uncle testified on his behalf. During the hearing, the individual's uncle stated that he has always had a close relationship with the individual. *Id.* at 64. According to the uncle, the individual called to ask him if he would take him to the alcohol rehabilitation program and he did. He testified that he has been closer to the individual ever since that occurrence. The uncle further stated that the individual asked him to be his sponsor, a role which he readily accepted. He testified that he and the individual attend the same church and that he has encouraged the individual to become more active in the church. *Id.* at 66. Regarding the individual's consumption of alcohol, the individual's uncle testified that to his knowledge the individual has been sober since before he entered the in-patient alcohol rehabilitation program, almost two years ago. *Id.* at 67. He testified that "I've always found him sober. I'm not with him twenty-four hours a day, but every time I saw him or talked to him it sounded like he was sober, or he looked sober to me." *Id.* at 68. According to the uncle, the individual has made a lot of positive changes in his life in the past two years. *Id.*

The individual also called an alcohol and drug counselor (Alcohol Counselor) and a clinical psychologist (Psychologist) at the site's Occupational Health Services department to testify during the hearing. The Alcohol Counselor testified that he met with the individual on two occasions in June 2005 and most recently September 2005. At his June meeting with the individual, the Alcohol

Counselor conducted an interview and gathered a psychosocial history of the individual, looking at various aspects of the individual's life, not just questions pertaining to alcohol and drugs. *Id.* at 14. The Alcohol Counselor stated that the individual was honest and straightforward with his responses to his questions. After this initial meeting, the Alcohol Counselor recommended that the individual change his lifestyle to support his sobriety. He specifically recommended that the individual engage in physical activities, continue going to church, find hobbies that interest him and continue his abstinence. *Id.* at 16. The Alcohol Counselor stated that the individual told him at their second meeting in September that he was attending AA, although not regularly. According to the Alcohol Counselor, he recommended that the individual attend AA at least twice a week and that he follow the twelve steps of AA. *Id.* at 17. The Alcohol Counselor further testified that although slow at first, the individual has taken the effort to comply with all of his recommendations, "he has made the effort on all . . . four requests. Seeing a physician and physical exercise. Continuing abstinence. Continuing church attendance once a week. And going to AA." *Id.* at 21. When asked whether he agreed that it has been a good sign that the individual has been able to maintain his sobriety for two years despite his irregular attendance at AA, the Alcohol Counselor agreed. He stated that "I sort of thought if he [the individual] was going to relapse he would have these two years. This is a pretty good duration to indicate whether or not a person can manage because most people that are physiologically dependent won't be able to withstand it." *Id.* at 33.

The Psychologist who works at the site's Occupational Health Services department testified that his primary job at the site is to perform fitness for duty evaluations. *Id.* at 35. He testified that he has met with the individual personally on two or three occasions but that there have been other staff psychologists who have also met with the individual. The Psychologist first met with the individual in January 2004. In light of his background in substance abuse and substance treatment, the Psychologist gathered records from the in-patient alcohol rehabilitation program where the individual was treated. The Psychologist testified that the individual did very well in the program and left the program with a good prognosis. *Id.* at 37. He testified that "in our monitoring of him since, we have had no evidence at any point that he has ever relapsed, including just today I reviewed his attendance record over those two years, and there is no evidence of what we call pattern absences or suspicious absences . . ." *Id.* The Psychologist further stated that the individual has never appeared defensive, but rather he has appeared honest, straightforward, "including, as is a matter of record, that he has been ambivalent about AA and involvement with that program. There are stretches where he'll go a couple of times a week and there's stretches where he won't. That, indeed, is a part of the history. For whatever reason, that program has not fit or worked well for him." *Id.*

The Psychologist opined that the individual has made several very positive changes in his life including his strong work ethic, his church involvement and his family support, but believes it would be useful for the individual to be connected with AA or some other support program like Celebrate Recovery, a Christian-based program, which might be a positive alternative for the individual. When asked whether the individual, having maintained almost two years of sobriety, has overcome the DOE Psychiatrist's concerns of not having enough follow-up with AA, the Psychologist stated the following:

Two years of abstinence is a pretty substantial period. And . . . all the evidence points toward him being sober and abstinent for over two years. That's a substantial period. If he were to ask me today would it be helpful for him to continue to be, and I'm taking a life perspective, not focusing on the issue of, I didn't see any derogatory information today, by the way. In fact, I processed what is called a Report of Medical Treatment that said I encouraged the company to submit him for a Q clearance. So I currently do not believe there is any present derogatory information as defined by 710.8. But back to your question regarding has he overcome. He has effectively coped with, but really alcohol dependence is a life-long recovery process. It's not just a matter of making it through the one year, two years, or even five years. So while I may not see any derogatory information today, for his benefit, I would encourage him to pursue some other avenues.

Id. at 40.

With respect to his opinion of the individual's prognosis, the Psychologist opined that the prognosis is good, "he has got some support systems in place. He's got two years of sobriety. It's kind of hard not to say that's a good prognosis." *Id.* at 41, 44. He indicated that the individual's prognosis would go from good to excellent if he got connected to some type of support program even if it were ongoing visits to the Alcohol Counselor. *Id.* at 41. The Psychologist further opined that the individual's likelihood of relapse would be an acceptable risk. *Id.* at 44.

After listening to the testimony of the other witnesses, the DOE Psychiatrist offered his testimony. When asked whether he heard any information during the hearing that he did not have in August 2004, when he evaluated the individual, that would cause him to change or modify his opinion with respect to evidence of rehabilitation, he stated "yes." *Id.* at 80. The DOE Psychiatrist stated the following:

I did hear several things that I think are good. One thing is that when I had met with him he didn't seem to be convinced that he was a person who couldn't drink. He indicated he was willing not to because he felt it was important for the clearance, and he couldn't take chances. I'm hearing very different that he does recognize, in fact, it has had negative impacts on his life. He's able to give examples, and he seems to recognize he can't drink. That is certainly a major step in the right direction. From all sources that we know, not the ones we don't know, but it appears as if there is potential likelihood that he's had almost two years of sobriety.

Id. at 81.

The DOE Psychiatrist agreed with the Alcohol Counselor and the Psychologist who both stated that it would be useful for the individual to be involved with AA, some other support program like Celebrate Recovery, or random drug/alcohol screens. *Id.* When asked about his opinion in 2004 that the individual would need two and a half years of abstinence without any kind of treatment to show rehabilitation, the DOE Psychiatrist stated that his opinion would not be a "hard and fast" rule,

but just a recommendation. *Id.* The DOE Psychiatrist was asked why he was deviating a little from the two and a half years time frame. He stated that “the fact that he’s [the individual] open to getting drug screens. The fact that he admits and acknowledges there has been a problem. The fact there’s been an apparent almost two-year time frame. The fact that [the Alcohol Counselor], who has had contact, seems comfortable. Those are all positive signs.” *Id.* at 84.

The DOE Psychiatrist was further questioned as to whether the individual could now meet his criteria of abstinence for a minimum of two years with professional counseling and/or AA participation on a weekly basis, documented by a sponsor for at least one year of this time. He stated that “objectively, in many ways, he [the individual] has.” *Id.* at 85. The DOE Psychiatrist’s stated that his only concern would be that there is not any “verifiable evidence to document whether he has actually not drank or consumed alcohol, we are hoping that’s the case, but we’ve not had random drug screens and we really don’t have any strong evidence. We do have things we are seeing, but I think a relapse program in place that has some verifiability would be an advantage.” *Id.* However, he agreed that the fact the individual has sought out the Alcohol Counselor and has plans to continue meeting with him is a verifiable source he could rely upon to keep from relapsing. *Id.* at 86. When asked again whether the individual has met his minimum criteria for rehabilitation assuming that the individual has been truthful about his sobriety for almost two years, the DOE Psychiatrist stated “yes,” however noting that this is based on an assumption that the individual has been sober. *Id.* He also found it very positive that the individual would be willing to be randomly screened. *Id.* at 87.

I have carefully considered the above-mentioned testimony in the record. Based upon the weight of the evidence and testimony presented in this case, I have concluded that the individual has adequately mitigated the concerns of DOE Security under Criterion H and J. First, I found the individual’s assertion that he has totally abstained from alcohol to be credible as did the Alcohol Counselor, the Psychologist and the DOE Psychiatrist by their testimony. During the hearing, the individual appeared to me to be truthful, candid and straightforward regarding the issue of his sobriety. In addition to this two-year period of abstinence, the individual has sought professional counseling and plans to continue to meet with the Alcohol Counselor, he has been attending AA, although sporadically, and intends to join a Christian-based program after learning of this alternative during the course of the hearing, he has strong family and church support and he is willing to undergo random alcohol testing (although it has not been required of him in the past). Secondly, the testimony of the Alcohol Counselor and the Psychologist was persuasive, supporting the individual’s assertion of his sobriety and corroborating testimony that the individual has made significant and positive changes in his life to keep him from relapsing. I found particularly favorable the Psychologist’s testimony, stating that the individual’s prognosis is good and that his likelihood of relapse is at an acceptable risk. It is important to note that both the Alcohol Counselor and the Psychologist have had the opportunity to meet with the individual on at least two occasions and therefore were both in good positions to observe the individual. Lastly and perhaps most significantly, the DOE Psychiatrist conceded that the individual has met his minimum criteria for demonstrating rehabilitation. Although the DOE Psychiatrist was somewhat concerned that the individual has not produced “verifiable” documentation that he has not consumed alcohol, he found

all of the individual's efforts in changing his life to be strong and very positive. 2/ Again, after weighing all of the evidence and the favorable testimony in this case, I am convinced that the individual has adequately mitigated the security concerns. Moreover, I find that the individual has taken responsibility for his life choices and now has a stable lifestyle with family, social and religious structures in place that provide a safeguard against the individual relapsing.

B. Criterion L, Unusual Conduct

Under Criterion L, the Notification Letter cites the individual's 2003 DUI charge and two incidents where it was believed that the individual provided contradictory statements during his PSIs and during his 2004 psychiatric evaluation. According to the Notification Letter, these matters raise serious questions about the individual's honesty, reliability and trustworthiness. During the hearing, the individual satisfactorily explained these contradictory statements. 3/ In addition, I am therefore persuaded that the individual has overcome the associated security concerns. For the reasons discussed in the preceding section of this Decision, I find that the individual has taken more responsibility for his life choices. The individual has dealt openly and honestly with his past use of alcohol, and I believe the individual now can be trusted to act in a manner consistent with the best interests of national security.

IV. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8(h), (j) and (l) in denying the individual's access authorization. For the reasons I have described above, I find that the individual has adequately mitigated the associated security concerns. I therefore find that granting the individual an access authorization would not endanger the common defense and

2/ I recognize that the individual has attended AA sporadically. Nevertheless, I have relied upon the testimony of the Alcohol Counselor, the Psychologist and the DOE Psychiatrist who believe the individual has made significant positive changes in his life to support his continued sobriety regardless of his sporadic AA attendance.

3/ Pursuant to Criterion L, the Notification Letter stated 1) that during the November 5, 2003, PSI, the individual states that his use of alcohol had nothing to do with the divorce that he was going through, which contradicts his statements during the April 1, 2004 PSI and August 17, 2004 psychiatric evaluation when he admitted that drinking did cause his second wife to leave him, and 2) that the individual denied during the August 17, 2004 psychiatric evaluation that he had experienced blackouts from alcohol consumption, which contradicts records from the in-patient rehabilitation program where he stated that he had. *See* Notification Letter at 2. During the hearing, the individual clarified both of these charges to my satisfaction. With respect to the first charge, the individual stated that he intended to say in the 2004 PSI and psychiatric evaluation that alcohol was a factor in the break-up of his marriage, not the sole reason. *Tr.* at 54. He stated that at no time did he ever attempt to mislead or give false statements to the examiners. *Id.* Similarly, with respect to the second charge, the individual stated that he did not intentionally mislead the security analyst when he was asked had he ever experienced blackouts. *Id.* at 55. He indicated that he misunderstood the question and did not know that there was a difference between blackouts and "passing out." *Id.*

security and would be clearly consistent with the national interest. Accordingly, I find that the individual should be granted an access authorization. The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: March 17, 2006